IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 240 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX – Applicant(s)

Versus

BISLERI BEWERAGES PVT.LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 23/11/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question under Section 256(1) of the Income Tax Act,1961 (the Act) at the instance of the Commissioner of Income Tax, Gujarat-I, Ahmedabad.

> “(1)Whether, the Appellate Tribunal is right in law and on facts in holding that motor car repair expenses amounting to Rs.61,264/- should not be included under section 37(3A) of the Act?”
>
> (2)Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee is entitled for

weighted deduction under section 35B in respect of commission paid to foreign agents on export sales?”

2 The Assessment Year is 1984-85 and the relevant accounting period is the calendar year 1983.

3 Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the applicant-revenue and Mr.M.J.Shah, learned Advocate for the respondent-assessee.

4 In so far as question No.1 is concerned, it is an admitted position that the issue in controversy stands concluded by a decision of the Supreme Court in the case of *Britannia Industries Ltd. V/s. Commissioner of Income Tax, in (2005) 278 ITR 546.* In the circumstances, applying the ratio of the said decision to the

facts of the present case it is held that the Tribunal was not justified in holding that motor car repair expenditure amounting to Rs.61,264/- should not be included u/s. 37(3A) of the Act. The question is, therefore, answered in the negative i.e. in favour of the revenue and against the assessee.

5 In so far as question No.2 is concerned, Mr.Bhatt has very fairly pointed out that the issue stands concluded in favour of the assessee by a decision of this Court in the case of *Commissioner of Income Tax Vs. Cadila Laboratories (P.) Ltd. (1996) 221 ITR 35.* In the circumstances, it is held that the Tribunal was right in law and on facts in holding that the assessee is entitled to weighted deduction under Section 35B of the Act in respect of the commission paid to foreign agent on export sales. The question is, therefore, answered in the

affirmative, i.e. in favour of the assessee and against the revenue.

6 The reference stands disposed of accordingly, with no order as to costs.

Sd/- Sd/-
(D.A.Mehta,J) (H.N.Devani, J)

m.m.bhatt